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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,146	01/03/2002	Peter Braun	00-733	9399

7590

09/09/2004

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EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/040,146	Applicant(s) BRAUN, PETER	
	Examiner Carlos Lopez	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 8/16/04 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1) Claims 1-4, 7 and 12 are rejected under 35 U.S.C. 102 (a) and (e) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Potter (US 6273094). Potter discloses an extinguishing cigarette holder tube (11). The cigarette extinguisher includes a tube having an open end and a closed end (14). The tube includes a reduced diameter portion (12) between the open end and closed end (14). Due to the slidding fit between the cigarette and reduced diameter portion 12 the oxygen within the closed off tubular member (11) is quickly consumed such that the lighted end of the cigarette is extinguished (Column 3, line 60-67). Thus it is inherent or at the least obvious to a person of ordinary skill in the art, by preventing oxygen from entering the tube 11, the reduced inside diameter (12) sealingly engages the cigarette in order to extinguish it.

As for claim 2, the top of the reduced diameter portion (12) and closed end (14) provide an extinguishing area.

As for claim 3 and 7, the reduced inside diameter portion (12) provides for the closed end and open end of tube (11) to have a larger diameter.

As for claim 4, the reduced diameter portion 12 includes a plurality of axially spaced reduced diameter portions, the portions occurring as one moves down the tapered region.

⁶ As for claim 12, the axis of the tube, which passes through the center of the tube, is transverse to the reduced diameter portions 12, see figure 2.

2) Claim 4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musetti (US 4,809,715). Musetti discloses an extinguishing cigarette holder tube (10). The cigarette extinguisher includes a tube having an open end (12) and a closed end (30). The inside diameter of the tube includes a plurality of axially spaced reduced diameter portions (36) between the open end (12) and closed end (30). The plurality of reduced diameter portions engages the cigarette to extinguish it quickly (Column 2, line 11). In the abstract it is noted that one end of the tube is sealed in order to deplete the oxygen level in the tube. Thus it is obvious to a person of ordinary skill in the art at the time the invention was made, that in order to extinguish the cigarette, the insertion of the cigarette would create a sealed enclosure preventing oxygen from entering the tube in order to extinguish the lit end of the cigarette.

As for claim 11, the larger diameter portion is deemed as the portion lacking any reduced portions 36 thus meeting the claimed limitation of having a larger diameter portion than the two axially spaced apart reduced diameter portions 36.

As for claim 12, the axis of the tube, which passes through the center of the tube, is transverse to the reduced diameter portions, see figure 3.

3) Claims 5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter (US 6273094) as applied to claims 1-3 above, in view of Hicks (US 6463936). Potter is silent disclosing the open end of the tube having a short length side and a long length side. However, Hick discloses a cigarette extinguisher having an open end (58) comprising a short length and long length. At the time the invention was made it would have been obvious to a person of ordinary skill in the art to have provided

Potter's extinguisher with an open end (58) comprising a short length and long length as taught by Hicks in order to facilitates the insertion and removal of a cigarette.

As for claim 8, the reduced diameter portion may be integrally formed with the tube as taught by Hicks (Col. 3, lines 17-20).

As for claim 9, the reduced diameter portion may be closer to the closed end as shown by Hick in Fig. 1.

Response to Arguments

Applicant's arguments filed on 8/16/04 have been fully considered but they are not persuasive. Applicant notes that claims 1-10 are submitted to be patentable based on previously presented arguments. Consequently, as noted in the previous office action, Applicant's argument that Musetti fails to disclose a circumferential band, it is noted that claim 4 fails to claim a circumferential band. In regards to applicant's argument that Musetti fails to provide a sealing structure, applicant is referred to paragraph 2 above as previously noted.

Applicant is advised that a submission as required by CFR 1.114 must meet the reply requirements of 37 CFR § 1.111. 37 CFR 1.111(b) requires that the applicant reply to every ground of objection and rejection in the prior Office action.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference A has been cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CL


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